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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY JACKSON,

Defendant and Appellant.

B268477

(Los Angeles County
Super. Ct. No. BA400650)

APPEAL from an order of the Superior Court of Los Angeles County,
Jose I. Sandoval, Judge. Affirmed.

Laini Millar Melnick, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Anthony Jackson appeals the trial court's order denying his motion to recall his sentence and resentence him pursuant to Proposition 47, the Safe Neighborhoods and Schools Act (Pen. Code, § 1170.18, subd. (a)).¹ We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On October 22, 2012, Jackson pleaded no contest to grand theft auto (§ 487, subd. (d)), based on his July 2012 taking of a 1991 Toyota Tacoma truck. The trial court imposed but suspended execution of a three-year sentence and placed Jackson on formal probation for a period of three years, on the condition he serve 182 days in county jail, with credit for 182 days served. Between December 2012 and October 2015, probation was revoked and reinstated numerous times.

In October 2015, the trial court conducted a hearing on Jackson's "Proposition 47 petition."² Jackson was represented by counsel. During those proceedings the People represented that the stolen truck had been valued at \$4,500, and had contained tools valued at \$3,500. The truck was recovered, but the tools were not. The trial court denied the petition on October 20, 2015, because the amount in question exceeded \$950.

On November 17, 2015, Jackson filed a timely notice of appeal challenging the trial court's ruling on the Proposition 47 petition.³

On December 1, 2015, the trial court terminated probation, imposed the three-year sentence, and awarded Jackson 930 days of custody credit.

After review of the record, appellant's court-appointed counsel filed an opening brief that raised no issues, and requested this court to conduct an independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436. On May 16, 2016, we

¹ All further undesignated statutory references are to the Penal Code.

² The record before us does not include a copy of the petition.

³ Before filing his notice of appeal, on November 13, 2015, Jackson, acting in propria persona, filed a petition for writ of habeas corpus in the superior court likewise challenging the ruling on his Proposition 47 petition. The record does not reflect the superior court's ruling on the habeas petition, and it is not before us.

advised appellant that he had 30 days to submit by brief or letter any contentions or argument he wished this court to consider. We have received no response.

DISCUSSION

Proposition 47 amended and enacted various provisions of the Penal and Health and Safety Codes which reduced certain drug and theft offenses to misdemeanors, unless committed by ineligible offenders. (*Alejandro N. v. Superior Court* (2015) 238 Cal.App.4th 1209, 1222; *People v. Diaz* (2015) 238 Cal.App.4th 1323, 1327-1328.) As pertinent here, Proposition 47 added section 490.2, which provides that “[n]otwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars (\$950) shall be considered petty theft and shall be punished as a misdemeanor” unless committed by an ineligible defendant.

Proposition 47 also enacted section 1170.18, which creates a procedure whereby a defendant who is currently serving a felony sentence for one of the reclassified offenses may petition for recall of sentence and resentencing. (§ 1170.18, subd. (a).) Section 1170.18 does not expressly include grand theft, section 487, as one of the offenses that may be resentenced, but it does include section 490.2. Therefore, an eligible defendant who has been convicted of grand theft of property worth \$950 or less may petition for resentencing. The petitioning defendant has the initial burden of establishing eligibility, including establishing that the property stolen was valued at \$950 or less. (See, e.g., *People v. Sherow* (2015) 239 Cal.App.4th 875, 878-880; *People v. Perkins* (2016) 244 Cal.App.4th 129, 136-137; *People v. Rivas-Colon* (2015) 241 Cal.App.4th 444, 449-450.)

The trial court properly denied the petition because Jackson failed to meet his initial burden to prove the value of the property stolen was \$950 or less. Although the record before us does not contain the petition, at the hearings on the motion defense counsel did not argue the value of the property fell below the statutory threshold, nor did the parties or court reference any evidence that might have supported such a finding. The

only evidence referenced – which appears to have been contained in a police report and/or a probation report – suggested the value of the property far exceeded \$950. Therefore, the petition was properly denied. (*People v. Rivas-Colon, supra*, 241 Cal.App.4th at pp. 449-450.)

We have examined the entire record and are satisfied appellant’s attorney has fully complied with the responsibilities of counsel and no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 126; *People v. Wende, supra*, 25 Cal.3d at pp. 441-442.)

DISPOSITION

The order is affirmed.

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ALDRICH, J.

We concur:

EDMON, P. J.

HOGUE, J. *

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.